

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-54589

Issued to: Lucas Torres

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1596

Lucas Torres

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 4 April 1966, an Examiner of the United States Coast Guard at New York, New York, revoked Appellant's seaman's documents after finding him guilty of misconduct. The specifications found proved alleged that appellant:

(1) while serving as an elevator operator aboard SS UNITED STATES, did, on 27 February 1965, at sea, wrongfully molest a female passenger by placing his arms around her and kissing her;

(2) did, on the same occasion, wrongfully address the same female passenger in improper and suggestive language; and

(3) while serving as a first class waiter on board the same vessel, did, on 10 September 1965, when the ship was in New York, wrongfully molest a female by placing his arms around her and kissing her in a lascivious manner.

At the hearing, Appellant was represented by professional counsel, and entered a plea of not guilty to the charge and specifications.

The Investigating Officer introduced into evidence the testimony of several witnesses and documentary evidence.

Appellant introduced the testimony of several witnesses and several documents. Appellant also testified himself.

At the end of the hearing, on 24 February 1966, the Examiner reserved decision. On 4 April 1966, the Examiner entered a written decision and order. After finding the charge proved, he ordered the revocation of Appellant's Seaman's documents.

FINDINGS OF FACT

On 27 February 1965, Appellant was serving as an elevator operator aboard the United States SS UNITED STATES and acting under authority of his document while the ship was at sea.

At about 1530 on that date, when on Miss Marlene McMurray, sixteen years of age, a cabin class passenger, was alone with him in a stopped elevator with the door closed, Appellant embraced her, kissed her, and declared that if she were "nice" to him he would be "nice" to her.

About three hours later, at a "line-up", Miss McMurray identified Appellant as the man of whom she had complained.

On 10 September 1965, Appellant was serving as first-class waiter aboard the same SS UNITED STATES and acting under authority of his document while the ship was in the port of New York. Appellant was assigned as waiter at a pre-sailing party in the room of certain passengers. While there, he followed a female guest at the party into a toilet and, pushing her against a sink, kissed her.

There were two witnesses to this episode, and the matter was reported to vessel authorities after sailing.

BASES OF APPEAL

It is contended on appeal that the Examiner's decision should be reversed on two grounds:

- (1) that the Examiner was improperly influenced by the fact that two different unrelated episodes were the subject of charges at the same hearing, and
- (2) that the findings are against the weight of the evidence.

It is also urged that, of the charge is proved, the order of revocation is too harsh.

APPEARANCE: Abraham E. Freedman, of New York, New York, by Edward M. Katz, Esquire.

OPINION

I

The Examiner, clearly, from the hearing proceedings and from his decision, leaned over backwards to judge each specification upon the merits of the evidence adduced. He dismissed two other specifications dealing with alleged molestations of females on 16 September 1965.

This argument is without merit.

II

To demonstrate that the findings are against the weight of the evidence, Appellant urges the inherent credibility of the witnesses and minor discrepancies in testimony of witnesses against Appellant as to who was standing where, at what minute, in a room full of people at a pre-sailing party.

Appellant asks, in fact, that a review de novo be made. The Examiner has already disposed of these problems and there is substantial evidence to support his findings. Since the Examiner's findings are not clearly erroneous, there is no reason for me to disturb them.

III

Since the Examiner's findings are to be upheld, his order must be found appropriate. Conduct of crewmembers dealing with passengers and guests aboard the vessel must meet the highest standards. Appellant's significantly fell short, and revocation of his document is appropriate.

ORDER

The order of the Examiner, dated at New York, New York, on 4 April 1966, is AFFIRMED.

W.J. Smith
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 15th day of December 1966.

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